

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 64/SRT/2023 (AY: 2017-18)

(Physical hearing)

Nileshkumar Chhaganbhai Vasoya, 186, Suvidha Row House, Near Yogi Chowk, Puna Simada Road, Surat – 395010. PAN : AMFPV9665F	Vs.	The ITO, Ward -3(2)(8), Surat.
APPELLANT		RESPONDEDNT

Appellant by	Shri Rohit Taja, CA
Respondent by	Shri J. K. Chandnani, Sr. DR
Date of institution	27/01/2023
Date of hearing	15/11/2023
Date of pronouncement	15/11/2023

Order Under Section 254(1) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMEBR:

1. This appeal by assessee is directed against the order of Learned Commissioner of Income Tax (Appeals) [in short 'Ld. CIT(A)'] / Learned National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 29.03.2022 for Assessment Year (AY) 2017-18. Initially this appeal was decided in *ex parte* order vide order dated 08.05.2023. However, order dated 08.05.2023 was recalled on filing Miscellaneous Application (MA) by assessee vide order dated 01.11.2023 in MA No. 54/2023. Hence, this appeal was fixed for hearing afresh. The assessee has raised the following grounds:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in making addition of Rs.11,12,500/- as unexplained money on account of cash deposited during the period of demonetization u/s 69 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in invoking provisions of section 115BBE of the Act and in thereby taxing entire unexplained money at 60 percentages and levying surcharge at 25 percentages which is not applicable on above addition.

3. The assessee craves leave to add, alter or delete any ground(s) in the course of the hearing of the appeal.”

2. Rival submissions of the parties were heard and record perused. At the time of hearing, the learned Authorised Representative (in short ‘the ld. AR’) of the assessee submits that there is delay of one day in filing appeal before Tribunal. The ld. AR for the assessee submits that there is delay of two hundred forty-four (244) days in filing appeal before the Tribunal. The ld. AR for the assessee submits that the delay in filing appeal is neither intentional nor deliberate. The assessee has engaged a consultant for filing return of income who has given his own e-mail (catgbandassociates@gmail.com) and telephone number (9820060086) on the ITBA portal. However, when the case was selected for scrutiny, he has not given proper information and explanation before the Assessing Officer which resulted in addition on account of credit in the bank. The assessee challenged his consultant while filing appeal before ld. CIT(A). The ld. CIT(A) vide issuing notice of hearing of appeal, sent notice on the e-mail available on the portal instead of e-mail and telephone number uploaded while filing Form No.35. Since, no communication was received by assessee, the assessee could not made proper compliance which resulted in passing *ex parte order*. The assessee later on an enquiry through present consultant came to know that order has already been passed by ld.

CIT(A) in dismissing the appeal *ex parte*. The assessee on coming to know immediately file appeal in Jan, 2023. The ld. AR submits that assessee has good case on merit and is likely to succeed. The Assessing Officer made addition on account of deposits in bank. The impugned order passed by ld. CIT(A) was received by assessee only on 29.03.2022 and this appeal was filed on 27.01.2023. The ld. AR submits that there is no intentional or deliberate delay and the same may be condoned on his oral application. The assessee has good case on merit and would suffer prejudice if the delay is not condoned.

3. On merit of the case, the ld. AR of the assessee submits that ld. CIT(A) passed *ex parte* order in dismissing the appeal without discussing merit of the case. Though, before ld. CIT(A), the assessee filed detailed statement of fact. The ld. CIT(A) without considering the fact, upheld the order of Assessing Officer. The ld. AR of the assessee submits that notice of hearing of appeal was not communicated to the assessee, so the assessee could not file his submission. The assessee engaged a tax consultant who has his own e-mail address at the time of filing appeal before ld CIT(A), for the purpose of services of notices. The notice of hearing may have been communicated at his mobile or his e-mail address which was not communicated to the assessee. Thus, there is sufficient cause for non-compliance of notice of ld. CIT(A). The appeal was filed in 2019 and the assessee was waiting for result of the appeal and it was dismissed in limine in *ex parte* order by ld CIT(A). The Assessing Officer made addition on account of cash credit in the bank

account by holding that assessee failed to furnish supporting evidence about cash withdrawal from bank. The ld. AR of the assessee submits that in fact the assessee has encashed the fixed deposits and again deposited the same in his account. The credit is the bank account in not unexplained. The ld. AR of the assessee submits that assessee has good case on merit and likely to succeed one more opportunity to explain the credit is given to the assessee. The ld. AR of the assessee submits that he undertakes on behalf of the assessee that assessee would be more attentive in attending the proceeding before lower authorities, if one more opportunity is given to contest the case on merit of the assessee. Undisputed fact is that the lower authorities have passed in absence of assessee, so at least the assessee deserves one more opportunity to contest his case on merit.

4. On the other hand, learned Senior Departmental Representative (ld. Sr. DR) for the Revenue, on the contention of delay in filing appeal, submits that the assessee has not explained the delay. The reason for not filing appeal is not plausible and reasonable. The assessee is habitual in defaulting the hearing before the authorities. The ld Sr DR for the revenue submits that the application for the condonation of delay deserve to be dismissed.
5. On merit of the case, the ld. Sr. DR submits that assessee has neither attended the hearing before Assessing Officer nor before ld. CIT(A). The assessee has not given reasonable and plausible explanation for non-attendance before lower authorities. In such situation, the lower

authority has no option except to pass the order on the basis of material available on record. The ld. Sr. DR submits that he fully supports the order of lower authority.

6. In rejoinder of the submission, the ld. AR of the assessee submits that order passed the order as per mandate of section 250(6) of the Income Tax Act. The ld. AR for the assessee prayed that matter may be restored to the file of Assessing Officer with the liberty to the assessee to allow to file on the evidences and explanation before the Assessing Officer about the credit in the bank account.

7. I have considered both the parties and perused the material carefully. Before me the ld AR for the assessee vehemently submitted that the assessee was not served with the notice of hearing of appeal as the e-mail address and the phone number in the ITBA portal, was of old consultant of the assessee. At the time of hearing the ld AR for the assessee filed the screen shots of details of e-mail catgbandassociates@gmail.com and telephone number (9820060086) on the ITBA portal. Thus, considering the contentions of both the ld representative and keeping in view that when the technical consideration and cause of substantial justice if pitted against each other, the cause of substantial justice may be preferred. I am also of the view that the assessee was not likely to get any benefit in filing the appeal belatedly. Therefore, keeping in view the facts that the assessee suffered order due to non-representation before ld CIT(A), hence, by

taking a lenient view, the delay of two hundred forty-four (244) days in filing the appeal is condoned. Now advertng to the merit of the case.

8. I find case of assessee was selected for scrutiny for cash deposit during demonetization. The assessing officer during the assessment asked the assessee to substantiate the cash deposits of Rs.11,12,500/- in his bank account with State Bank of India. The assessee filed his reply dated 23.12.2019, wherein the assessee stated that he made cash withdrawal of Rs. 16.99 lakhs from various bank and during demonetization deposited Rs. 11,12,500/- in his bank account. The Assessing Officer made addition by taking view that the assessee failed to furnish documentary evidence about his claim of withdrawal from bank. The Assessing Officer in absence of documentary evidences, treated the entire cash deposits of Rs.11,12,500/- as unexplained money under section 69A in the assessment order dated 25.12.2019 passed under section 143(3) of the Income Tax Act. The ld. CIT(A) confirmed the action of Assessing Officer by taking view that assessee was served several notices, but the assessee has not filed any written submission. The ld CIT(A) in absence of any submission from assessee upheld the order of Assessing Officer on addition on account of cash deposits. Before me, the ld. AR of the assessee vehemently submitted that the assessee was not allowed reasonable and proper opportunity and that assessee has good case on merit and likely to succeed if he is given one more opportunity to contest his case and he further undertake to be more

vigilant in future. The credit is the bank account in not unexplained. I find some merit in the submissions of Id AR for the assessee that the lower authorities have passed in absence of proper explanation and submissions, so at least the assessee deserve one more opportunity to contest his case on merit. No doubt before passing the order the lower authorities made efforts to serve the assessee with the notice of hearing. However, considering the principles of natural justice that the assessee remained unrepresented before Id CIT(A) and suffered addition only for the want of any submissions, therefore, I deem it appropriate to give one more opportunity to the assessee to contest his case on merit and restored the grounds of appeal to the file of Assessing Officer, instead of Id CIT(A). The assessing officer is directed to pass the order, on granting reasonable opportunity of hearing to the assessee. The assessee is given liberty to file all the evidence in his possession to substantiate the cash deposit in the bank. The assessee is also directed to be more vigilant and not to prolong the case by seeking date without any valid reason. In the result, the grounds of appeal raised by the assessee are allowed.

9. In the result, the appeal is allowed for statistical purposes.

Order pronounced in open court on 15/11/2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 15/11/2023
SAMANTA

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

// TRUE COPY //

Assistant Registrar/Sr.PS/PS, ITAT, Surat